

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2451 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BECHARBHAI SHANKERBHAI PRAJAPATI

Versus

STATE

Appearance:

MR PJ VYAS for the petitioner
MR SK PATEL for Respondent Nos.1 & 5
MR UDAYAN P VYAS for Respondent No.4
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of Decision : 30/12/99

C.A.V.JUDGMENT

1. Bombay Tenancy and Agricultural Lands Act was enacted with the object and purpose that persons who are really cultivating the lands as a tenants, their rights are being protected. To protect the agricultural tenants at the time when these owners of the lands were

exploiting them by taking substantial share of the agricultural produce this Act was enacted. The conditions of the persons who were cultivating the land by putting hard labour and working in hot, rain and winter even in the odd hours were not good and they were getting meagre share, which is hardly sufficient for them to meet even the expenses of their bare livelihood. They were not having a house for inhabitation. They were not having cloths on their body. Another purpose was to see that this agricultural land is not converted for nonagricultural purposes so that it may adversely effect the economy of the country and to avoid the possible difficulty to have sufficient food grains to meet the growing demand of citizens. There was another reason that the person of the means may not hold the land and thereby deprive real agriculturist of the land. It is not gainsay that this class of the persons after selling of the land will render themselves landless as the substantial amount which they received as sale price will be spent in discharging their liabilities and as a result thereof they will not only become landless but also jobless. They have to depend on mazduri. To see, protect and fulfil these objects and purposes, the legislature taken care and precaution and necessary provisions made in the act whereunder in case where a nonagriculturist intends to purchase agricultural land, he has to take the prior permission of competent authority. Even, if the purchaser is an agriculturist still there are restrictions on purchase of land to certain extent with which presently in this case we are not concerned.

2. Though the Act has been enacted with good objects and purposes, but in implementation thereof I am constrained to observe the Government machinery is responsible for the same. It is acting contrary to the very basis features, purposes and objects of this Act. The reasons are manifold, which are not necessarily to be touched here. The authorities concerned with the implementation of provisions of the Act first permit the things go illegally and when everything has been done contrary to the provisions of the Act at all levels then on one fine morning initiate the action for cancellation of the sale deed or revenue record entry based on the sale deed. By that time, the matter is delayed considerably and existing position of the land is also totally changed. The present is the case which clearly illustrate what it is said earlier. The petitioner as what his learned counsel admitted, has in fact purchased the agricultural land in dispute for the purpose of carrying on nonagricultural activities since the very

inception of the day of the purchase. He purchased this land to carry thereon his business of manufacturing of bricks. From the judgments made by the authorities below, it is clear that the sale deed of the land in dispute was held to be invalid on the ground that it is made without prior permission of the competent authority which was essential as the petitioner was not an agriculturist. This sale was effected under a registered sale deed. The officer, who is concerned with the registration of this document has not taken care at the first opportunity to see whether this transaction of sale is valid or not. But this officer favours registration of documents on presentation thereof immediately for the reasons, which are now well known. He may be a Revenue Officer discharging his duties under the Registration Act, but when the sale relates to agricultural land it is his concern to see that the conveyance is executed after compliance with all necessary requirements of the law and it is a valid document under the Act. He is not correct to believe or take that he is only concerned that on the document proper stamp duty is paid. It is the first stage where in case this document would have been examined with reference to its validity then it would have served manifold purposes i.e. the illegal sale of agricultural land would not have been there unnecessary litigation would not have been there and last but not least the agricultural land would not have been converted for nonagricultural purposes. I am constrained to observe that the officers of the State favour that the people may act contrary to rules, regulation and Act, otherwise there is no scope for corruption. That is not the end of the matter. Then comes the next stage. The petitioner relying on this document applied to the competent Revenue Officer for effective consequential changes in the revenue record. His name may have to be entered as holder of the land in Revenue Record on the basis of this document. At this stage two officers of the Revenue Department, which are closely connected concerned and related to the implementation and enforcement of the provisions of the Act, 1948 i.e. Talati-cum-mantri and Deputy Mamlatdar or Mamlatdar as the case may be come into picture. This is the second stage where it is expected of these two officers to take all care, precaution and scrutiny of the document to see that it is legal or not. But for the well known reasons these officers also permit the things to go unchecked without scrutinizing and forthwith as in case they start to make such investigation or inquiry then as are being on receiving end they will be looser. Here it is the duty of the concerned Talati-cum-mantri to see, ascertain and satisfied that this sale deed is valid before submitting

the matter for certification of the entry to the Deputy Mamlatdar or Mamlatdar as the case may be. From this channel invariably this document is passed over smoothly as it rolls on the wheels to reach to Deputy Mamlatdar or Mamlatdar which have adequately been greased. Then come the third stage i.e. where the Deputy Mamlatdar or Mamlatdar certifies this entry. Here also no inquiry, investigation or scrutinizing of such document appears to have been made otherwise at this stage it can very well be noticed that the sale deed is not a valid or legal document. This may possibly happen only when these officers are adequately been tipped by the concerned person and as a result of it they do not undertake any scrutiny of this document re its validity, correctness and propriety. Then come fourth stage i.e. where the petitioner has prayed for grant of permission to use this land for nonagricultural purposes. The learned counsel for the State states that the District Panchayat is the authority concerned to deal with such applications. Here before granting a permission for the use of the agricultural land in dispute for nonagricultural purpose the competent authority should have taken care to prima facie satisfy that the sale deed is legal and valid document. Here also this matter has been decided without caring for all these things. It is unfortunate that there is no coordination amongst the officers and District Panchayat and as a result of which officer concerned acts in his own way. The Act had been enacted in the year 1948 but now the needs desires, comforts ambitions and have of the officers and employees been drastically increased. It is said rampant corruption is there in the country. From the facts of this case as well as the matters which earlier have come up in this court and are coming everyday necessarily inference follows therefrom that what this peoples say, feel and express for corruption seems to be correct. In case a single window procedure may have been there at the very threshold the illegality would have been detected and thereafter this document would not have conferred any benefits whatsoever to the petitioner. Possibly the corruption would also been controlled. However, this is the concern of the State Government and its officers to see that these illegalities in the transactions and the action of the citizens contrary to the provisions of the laws etc. are being controlled.

3. The petitioner by this petition under Article 227 of the Constitution challenges legality, propriety and correctness of the decision of the Gujarat Revenue Tribunal, Ahmedabad dated 17.2.1989 wherein Revision Application No.TEN.B.A.54/88 filed by the petitioner

against the order of the Prant Officer, Gandhinagar dated 26.5.1986 in Tenancy Appeal No.235/84, has been confirmed. The Prant Officer, Gandhinagar under his order confirmed the order of the Mamlatdar and ALT, Gandhinagar dated 24.1.1983 under which it has held that, transfer of the disputed land made in favour of the petitioner by the respondent nos. 2 and 3 is in violation of the provisions of the Act, 1948.

4. Further order has been passed for vesting of land free from all encumbrances in the Government. It is ordered that in case all the parties after receipt of the order within 90 days restored the land to its original position and intimation of it has been given to the authority concerned then this order shall not be implemented.

5. Facts of the case are that, the petitioner adding the name of his wife - respondent No.4 herein, purchased the land in dispute by registered sale deed from Ambalal Sarabhai Patel and Kantibhai Sarabhai Patel. During the pendency of this Special Civil Application, Ambalal Sarabhai Patel has expired and his heirs and legal representatives have been brought on the record. This sale deed was executed on 8.6.1982 and sale consideration was of Rs.30,000/-. The possession of the disputed land has been delivered to the petitioner. On the basis of the sale deed, necessary corrections in the revenue record, vide entry No.1348 has also been made and the petitioner and his wife are shown as occupants of this land. The petitioner also purchased agricultural land at village Adalaj, Taluka and District Gandhinagar, by registered sale deed dated 8.6.1981 for Rs.31852/-. Necessary corrections in the revenue record has been made by showing the petitioner as occupant of this land vide entry No.6586 which was certified on 18.6.1981. For the disputed land the petitioner has got non-agricultural permission and the learned counsel for the petitioner admits that he started the use of the land for manufacturing bricks. The land in dispute is situated in village Sargasan, Taluka and District Gandhinagar. The Mamlatdar - RTS Team submitted a report on 30.11.1982 regarding the land in dispute that the petitioner is residing at the distance within 15 kms and being an agriculturist of beyond 8 kms, he cannot be said to be an agriculturist as defined under sections 2(2) and 2(6) of the Tenancy Act and necessary proposals have been made to initiate the proceedings under section 84(C) of the Tenancy Act. Accordingly, the Mamlatdar and ALT, Gandhinagar issued notices to the petitioner and respondent No.2, and after recording the evidence of the

parties, under the order dated 24.1.1983 declared it to be invalid sale and consequential order has also been passed. Against this order, appeal has been preferred before the Prant Officer, Gandhinagar which was came to be dismissed on 26.5.1986. That order has been challenged before the Gujarat Revenue Tribunal and that has been confirmed in the revision, hence this Special Civil Application.

6. Learned counsel for the petitioner contended that whole of the proceeding is vitiated on the ground that the Mamlatdar and ALT has not even issued the notice of these proceedings to the respondent Nos. 3 and 4. Second contention has been raised that non-agricultural permission for the land in dispute was granted on 10.12.1982, i.e. before initiating the proceeding under section 84(C) of the Tenancy Act by the Mamlatdar concerned and transfer of the land could not have been declared as invalid as the land ceased to be an agricultural land.

7. It has next been contended that the Tribunal has not decided the matter on merits. It has confirmed the order of the Prant Officer, Gandhinagar without discussing the matter on merits. He prayed for remand of the matter to the Tribunal for decision of the revision on merits.

8. Lastly, in his submission, it is only a technical breach of the law and the competent authority may consider to grant post facto sanction for this sale of the land. Mr.Vyas, learned counsel for the petitioner contends that the petitioner is an agriculturist and this land has been purchased in the year 1982. He is in possession of the land since last so many years and the original owners are not challenging the sale deed nor they are interested in the land and no useful purpose would be served to maintain all these orders. The disputed land has been converted for non-agricultural purpose and it is used for manufacturing bricks and it totally became uncultivable.

9. Mr.S.K.Patel, learned AGP for the State contended that all the three authorities concurrently held against the petitioner. Judgments of the authorities below cannot be said to be perverse and this court may not interfere in the matter.

10. It has next been contended that, in case this type of approach has been taken by the courts, there will be no ends to violation of the provisions of the Acts. The petitioner has acted contrary to the provisions of

the Tenancy Act and as he is not being a law abiding citizen, no relief may be granted in his favour.

11. It has further been contended that, it is true that at the appropriate stages the matter was not taken care of, but only on this ground, the petitioner will not get any right or this invalid sale does not become valid.

12. Lastly, it is contended that, merely because the non-agricultural permission has been granted, the Mamlatdar is not ceased to have any jurisdiction in the matter. There is no question of grant of post facto permission for the sale of the disputed land.

13. Learned counsel for the respondent No.4 has supported the petitioner and rightly so because she is a wife of the petitioner.

14. I have considered the rival contentions made by the learned counsel for the parties.

15. The Mamlatdar and ALT, Gandhinagar has recorded the findings of fact,

"Becharbhai Shankerbhai and Jayotiben Becharbhai have stated on oath that they are native of Adalaj, Taluka District Gandhinagar. In the registered sale deed, they were described residents of Adalaj. The petitioner has not produced any evidence as to show and establish that he is an agriculturist prior to sale deed dated 18.6.1981 of the agricultural land of village Adalaj. The petitioner has not obtained the permission under section 63 of the Tenancy Act when he purchased the land at village Adalaj. Similarly, he has not obtained the permission before the land in dispute is purchased. No land is held by Jayotiben as an agriculturist."

16. From this finding of fact and after reading the judgment of the Mamlatdar, I find that he held that the purchase of the land by the petitioner at village Adalaj was contrary to the provisions of the Tenancy Act. It is true that, this sale deed was not in question nor any notice has been given for cancellation thereof, but the petitioner has relied on this sale to show and establish that he is an agriculturist and this inquiry has become essential had rightly been gone into and decided by the Mamlatdar and ALT, Gandhinagar. The petitioner relied on the sale deed of the land of village Adalaj to get out of clutches of the provisions of the Tenancy Act. These two sale deeds, if we go by the facts, are within a period of almost one year. The sale of the disputed land is of

8.6.1982 and that of Adalaj is of 18.6.1981. In these facts, the petitioner has to show and establish as a fact to the satisfaction of the authority concerned that on the date on which he purchased the land of village Adalaj, he was an agriculturist.

17. Be that as it may. It is not the case of the petitioner that on the day he purchased agricultural land at village Adalaj he and his wife were agriculturists. The land in dispute has been purchased in the joint name and it has to be established by the petitioner by producing cogent and satisfactory evidence that his wife was an agriculturist. That has not been done. The petitioner has not produced any evidence on the record of the proceedings before the Mamlatdar, Prant Officer or the Gujarat Revenue Tribunal or even before this court in these proceedings in support of his case that both transferees were agriculturists on 18.6.1981. In view of this factual position, only on the basis of the sale deed dated 18.6.1981 the petitioner could not have been taken to be an agriculturist and rightly it was not taken. The question of wife as being an agriculturist does arise. She cannot be taken to be an agriculturist at all even by sale deed dated 18.6.1981. The petitioner in these facts was under the legal obligation to take prior permission for the sale of this land in dispute in his favour, which has not been done and rightly this has been made a ground by the competent authority for cancellation of this sale deed.

18. It is not the case where considerable delay has been made in taking of this action and this action. In the facts of this case the action is taken within a reasonable time against the petitioner by the competent authority.

19. Learned counsel for the petitioner unable to satisfy this court on merits in his favour. He has raised a technical ground to challenge this order. The substance and not technicality is to be taken into consideration and where this court is satisfied on merits that the petitioner has no case only on the technical ground, even if there is some breach of law is made in procedure, no relief can be granted. Otherwise also, I do not find any merits in any of the technical grounds/contentions of the learned counsel for the petitioner. The respondent No.4 is the wife of the petitioner and even if the notice has not been given to her by the Mamlatdar of the proceedings initiated under section 84(C) of the Tenancy Act, it will not vitiate the proceedings. The wife - respondent No.4 herein of the

petitioner, on being asked by the court to her advocate failed to show that she has any independent sources of income or capital. It is the case where the petitioner is a real purchaser and the name of the wife has been there for the reasons best known to him. The respondent No.4 though filed reply affidavit in these proceedings therein only plea that the notice has not been given to her has been reiterated. She has not stated that she has purchased this land with her husband from her own capital. It is infact and substance only the name of the respondent No.4 is there in the sale deed, otherwise she has not in fact paid anything towards sale consideration. Ostensibly the name of the respondent No.4 in the sale deed cannot be taken her to be a real transferee.

20. It is no more res integra that, merely on technical breach of the principles of natural justice or nongiving of the notice to the otherside will not render the proceedings initiated to be invalid, unless the party concerned satisfied to the court that serious prejudice has been caused or it will cause to the party concerned. It is true that the sale deed was declared to be invalid, but the husband of the respondent No.4 i.e. one of the purchaser was given notice and looking to the relation of the parties, in this case it cannot be taken what to say to accept that because of this lapse on the part of the Mamlatdar and ALT, Gandhinagar these proceedings are to be held to be invalid. It cannot be taken to be a case where by not giving notice or opportunity of the hearing to the respondent No.4 any prejudice is caused to her under the impugned order. Moreover the respondent No.4 has not challenged these proceedings though she was in known of them. Here the petitioner on this plea is making a ground to challenge the proceedings though admittedly he was served with the notice of the same. This objection or ground otherwise not available to him. Otherwise also what on merits she could have stated. She is not a vendee of the sale deed of agricultural land of Adalaj. On the record of this case the respondent No.4 has not produced any material or evidence to show that she is an agriculturist. In fact and substance otherwise she has no defence. The sale deed qua her in all facts and circumstances is invalid.

21. So far as objection of not giving notice to the respondent No.3 is concerned, it is suffice to say that by not giving notice to him, no prejudice was resulted to him. The respondent No.3 is a party to this petition and he is even not cared to appear in the matter. It is a case where this plea has been taken by the petitioner only for his own benefits, that is to save sale deed.

There are consequential orders of the Mamlatdar and ALT, Gandhinagar which are to be taken note of. This land will vest free from all encumbrances in the State Government.

22. The respondents have sold the disputed land to the petitioner and respondent No.4 pocketed the money. They infact divested of their all rights and interests whatsoever therein. They are not interested in this land as what it is not the case of the respondent No.2 who was party to these proceedings. The respondent No.3 has not shown his interest in the matter at any point of time. In case the petitioner restored the land to its original owner as per the order of the Mamlatdar, they will get the land. So either way, by this order they are not to suffer any loss. In case, second alternative is accepted as given by the Mamlatdar, by this fact, they will get the land for which I fail to see, whether the notice has given to the respondent No.3. Impugned order will not materially affect nor it will cause any injury or prejudice to him. The vesting of this disputed land in the State Government will be there in view of their own conduct. But he will not suffer as he has already received money. Technically, the petitioner may be correct, but if we go by the facts and substance of the matter and couple with the fact that the respondent No.3 at no point of time has raised any objection in these proceedings, more so, before this court also where he is a party to this petition, on this ground this petition cannot be allowed. More over, this ground if accepted, will confer benefit to the petitioner only, as the respondent nos. 2 and 3 are not opposing this petition. In these facts and circumstances, otherwise also, on this ground no relief can be granted to the petitioner.

23. Learned counsel for the petitioner has failed to show any provisions from the Tenancy Act or any decision of this court or the Supreme Court wherefrom it can be taken that, on grant of non-agricultural permission, the Mamlatdar and ALT ceased to have any jurisdiction in the matter under section 84(C) of the Tenancy Act.

24. From the judgment of the Tribunal, I find that the matter has not been decided by it on merits. However, the Tribunal has not considered it to be appropriate case to interfere with orders of the lower authorities. The petitioner has not furnished any explanation for delay made in filing of the appeal before the Prant Officer, Gandhinagar. The Prant Officer, Gandhinagar dismissed the appeal of the petitioner on the ground of limitation. It is true that the Prant Officer

has gone on merits of the matter to certain extent, but only to satisfy itself whether the petitioner has any case on merits. From the judgment of the Prant Officer it reveals that the petitioner has failed to furnish any explanation for delay made in filing of the appeal. The delay cannot be condoned merely on asking of the parties. They have to make out a case for condonation of delay by showing sufficient causes by which he has been prevented from filing of the appeal before the appellate authority within limitation. In these facts, the Tribunal has not committed any error much less any jurisdictional error in not discussing the merits of the matter, more so, when the petitioner is unable to show anything on merits in his favour before the appellate authority. Otherwise also, I do not find it to be a fit case where this matter has to be remanded back to the Tribunal to decide on merits. So, even the matter is considered from any aspect or angle, it is not a case where interference of this court is called for under Article 227 of the Constitution.

25. I do not find any merits in the last contention of the learned counsel for the petitioner. In case, such course is adopted then it will open the flood gates for corruption as well as it will give encouragement to the people of the country to act contrary to the statutory provisions in their dealings. Only in the exceptional cases of hardships, the court may adopt such course, but not as a rule or right. Here, I do not find it to be an exceptional case. The petitioner is a businessman, in substance, he purchased the land for non-agricultural purposes and he used this land for all these years for non-agricultural purposes. After purchase of the same he is using it for his business and by now he would have already earned much more than the amount of the sale consideration. He already earned and made good profits from this disputed land and he cannot be permitted to retain this land any more. The petitioner is not willing to restore the land to its original occupants and as a result thereof, it has to be vested with the Government free from all encumbrances.

26. This is not a fit case where interference of this court is necessary under Article 227 of the Constitution.

27. As a result of the aforesaid discussions as this writ petition is wholly misconceived, the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. It is a case where exemplary cost has to be imposed upon the petitioner and accordingly the petitioner is directed to pay Rs.2000/as

costs of this petition, out of which Rs.500/- be paid to the respondent No.1 and balance Rs.1500/- be deposited in "National Defence Fund". This amount of the costs of the respondent No.1 be deposited within a period of one month from today and the receipt of the deposit of the amount of costs in "National Defence Fund" be produced on the record of this Special Civil Application.

(S.K.Keshote,J.)

(pathan)